

**EX PARTE OR LATE FILED**

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

**ORIGINAL**

FACSIMILE

(202) 955-9792

DIRECT LINE (202) 955-9765

E-MAIL: jcanis@kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

May 23, 2000

**RECEIVED**

**MAY 23 2000**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EX PARTE**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Written *Ex Parte* Statement of Metromedia Fiber Network  
Services, Inc.**

**Deployment of Wireline Services Offering Advanced  
Telecommunications Capabilities: CC Docket No. 98-147**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, enclosed please find two copies of Metromedia Fiber Network Services, Inc. (MFN) *ex parte* letter for consideration in the above-captioned proceeding.

No. of Copies rec'd  
List ABCDE

0 + 1

KELLEY DRYE & WARREN LLP

Magalie Roman Salas  
Secretary  
May 23, 2000  
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Canis', written in a cursive style.

Jonathan E. Canis  
David A. Konuch  
Kelley Drye & Warren, L.L.P.  
Counsel for Metromedia Fiber Network  
Services

cc: Larry Strickling  
Frank Lamancusa  
Jared Carlson  
Bill Kehoe  
Julia Patterson  
Bob Riordan (MFN)  
Karen Nations (MFN)

EX PARTE OR LATE FILED

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

COPY

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

FACSIMILE

(202) 955-9792

DIRECT LINE (202) 955-9765

E-MAIL: jcanis@kelleydrye.com

May 23, 2000

RECEIVED

MAY 23 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EX PARTE**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Written *Ex Parte* Statement of Metromedia Fiber Network  
Services, Inc.**

**Deployment of Wireline Services Offering Advanced  
Telecommunications Capabilities: CC Docket No. 98-147**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, Metromedia Fiber Network Services, Inc. (MFN) by its undersigned counsel, submits the following *ex parte* letter for consideration in the above-captioned docketed proceeding. Also pursuant to Section 1.1206(b)(1), two additional copies of this *ex parte* are being submitted to you for filing under separate cover. In the course of MFN's interconnection negotiations, certain issues have been raised concerning MFN's ability to establish cross-connections to other competitive carriers within ILEC central offices. MFN requests that the Commission clarify these matters in the above-captioned proceeding.

MFN is a provider of transport services to carriers and end users. MFN uses very high-count fiber optic cable to offer its customers long-haul transport, intra-city transport, and connections to end-user locations using "dark," "dim" and "lit" fiber.<sup>1</sup> MFN extends its

<sup>1</sup> Dark fiber refers to transport arrangement in which MFN provides only the optical fiber connections between points designated by the customer. The customer provides the electronics necessary to generate a signal over (or "light") the fiber on both ends of the

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Two

expansive intercity and intracity networks with collocation arrangements, through which it purchases unbundled loops and transport from ILECs. MFN also frequently connects to its customers through collocation arrangements – a typical arrangement may involve a CLEC that has collocated in an ILEC office in order to purchase unbundled loops, that wishes to cross-connect to MFN's collocated fiber distribution panel. In this arrangement, the CLEC connects the loops it purchases from the ILEC with competitive interoffice transport that it purchases from MFN.

Recently, an ILEC has questioned the legality of such cross-connections between collocated competitive carriers, stating that the recent decision by the D.C. Circuit Court of Appeals questions whether such cross-connections are required by the Communications Act.<sup>2</sup> As MFN discusses below, however, cross-connections among competitive carriers are fully consistent with the procompetitive mandate of the Act. The Commission should therefore reaffirm its orders allowing collocated CLECs to establish cross-connections to other CLECs, should find that ILECs are required under the Act to provide such cross-connections as unbundled network elements, and should find that ILECs are also required to provide such connections as a telecommunications service. MFN discusses these issues below.

**1. The Commission should find that cross-connected, collocated carriers are obtaining interconnection and access to UNEs pursuant to Section 251**

As noted above, an ILEC recently raised questions over MFN's ability to establish cross-connections between its collocated fiber distribution panel and the facilities of another collocated competitive carrier. The ILEC even suggested that it was impermissible for MFN to install only fiber distribution panels, and that MFN must install electronics necessary to "light" its fiber. As MFN discusses below, MFN's collocation and cross-connection arrangements are fully consistent with the Act, and are a highly desirable means of providing collocated CLECs with access to competitive interoffice transport provided by MFN.

Section 251(a) of the Act provides that all telecommunications carriers have the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(2) of the Act obligates ILECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access,"<sup>3</sup> and to provide "nondiscriminatory access to network elements on an

---

ends of the fiber cable, and provides its customer with a specified amount of bandwidth, such as DS1 or OC3.

<sup>2</sup> *GTE Service Corp. v. FCC*, 2000 WL 255470 (D.C. Cir. 2000) (*GTE v. FCC*).

<sup>3</sup> 47 U.S.C. § 251(c)(2).

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Three

unbundled basis at any technically feasible point.”<sup>4</sup> Section 251(c)(6) of the Act imposes upon ILECs the duty “to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements” at the ILEC’s premises.<sup>5</sup>

In the cross-connection arrangements discussed above, MFN unquestionably is collocating as necessary to obtain interconnection and access to UNEs. First, in cases where MFN is collocating to purchase UNEs from the ILEC, there should be no question that such collocation is mandated under Section 251(c) of the Act, and that ILECs may not dictate the nature of the network equipment that MFN may deploy in such arrangements.

Similarly, when MFN cross-connects to a CLEC that is purchasing unbundled loops from the ILEC, both MFN and the other CLEC are collocated to obtain access to those UNEs. This is mandated by Section 251(a) of the Act, which states that interconnection can be *direct or indirect*. MFN requests that the Commission declare that, where MFN is collocated in the LEC central office and is cross-connected to a CLEC that is purchasing UNEs from the ILEC, both MFN and the CLEC are interconnected for the purpose of obtaining access to UNEs under the Act.

Indeed, MFN has already negotiated interconnection arrangements with Bell Atlantic and GTE that expressly permit this arrangement. For instance, MFN’s interconnection agreements with GTE expressly recognize that when MFN connects to a CLEC that is purchasing UNEs from the ILEC, MFN is connected to that ILEC for purposes of Section 251:

Another CLEC that purchases UNEs from GTE, pursuant to an interconnection agreement between GTE and that other CLEC, may request that such UNEs be cross connected directly to MFN’s collocation arrangement . . . . GTE will bill the other CLEC for the UNEs and cross connects based on the interconnection agreement between GTE and the CLEC. MFN will be responsible for billing the CLEC for all services provided by MFN. *GTE agrees that the collocation requirement of “interconnection for the exchange of traffic with GTE and/or access to unbundled network elements (UNEs)” identified in section 1. [of this Interconnection Agreement] above, is satisfied if either MFN or its customer(s) interconnect with GTE or purchase UNEs from GTE, and the interconnection or UNEs are delivered to MFN’s collocation arrangement*

---

<sup>4</sup> 47 U.S.C. § 251(c)(3).

<sup>5</sup> 47 U.S.C. § 251(c)(6).

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Four

*in the same premises. MFNs is not required to directly connect with GTE or resell unbundled elements to satisfy this requirement.<sup>6</sup>*

Section 251 guarantees interconnection and collocation to requesting carriers to enable such carriers to gain “access to unbundled network elements.” The statute attaches no qualifier to “unbundled network elements,” and accordingly, a carrier’s carrier such as MFN should have the right to collocate in order to interconnect with the UNEs, regardless of whether it is purchasing the UNEs directly, or whether MFN is accessing the UNEs indirectly by cross-connecting to another collocated CLEC. *MFN requests that the Commission declare that the Act requires ILECs to permit MFN to cross-connect its collocated equipment to the collocated equipment of another collocated competitive carrier. The Commission should also declare that MFN may not be required to collocate equipment other than fiber cross-connect panels. Alternatively, we request that the Commission seek further comment on this issue in the Advanced Services Collocation Order remand proceedings.*

**2. The Commission should declare cross-connects between collocated competitive carriers to be a UNE**

In the *UNE Remand Order* the Commission interpreted the “impair” standard for non-proprietary network elements pursuant to Section 251(d)(2) to identify a national list of UNEs. The Commission found that an incumbent LEC’s failure to provide access to a non-proprietary network element “impairs” a requesting carrier within the meaning of section 251(d)(2)(B) if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier’s ability to provide the services it seeks to offer.<sup>7</sup> In order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic, and operational matter, the Commission looks at the totality of the circumstances associated with using an alternative. In particular, the Commission considers the cost, timeliness, quality, ubiquity, and operational issues associated with use of the alternative.<sup>8</sup> In addition, the Commission also considers whether unbundling obligations will further the goals of the Act, such as the rapid

<sup>6</sup> Interconnection and Unbundling Agreement Between GTE California Incorporated and MFNS, Article VIII, § 4.3.10. Bell Atlantic currently owns an equity stake in MFN. However, MFN negotiated the Bell Atlantic arrangement prior to Bell Atlantic’s purchase of its equity stake, and the GTE arrangement prior to approval of the announced Bell Atlantic-GTE merger.

<sup>7</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. Nov. 5, 1999) (*UNE Remand Order*) at ¶¶ 51.

<sup>8</sup> *Id.* at ¶¶ 62-100.

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Five

introduction of competition into all markets, the promotion of facilities-based competition, investment, and innovation, will reduce regulation, provide certainty in the market, and whether the unbundling obligations will be administratively practical for the Commission to apply.<sup>9</sup>

Applying the foregoing factors, the Commission should declare dark fiber and other cross-connects between collocated carriers within an ILEC central office to be UNEs.<sup>10</sup> Carrier-to-carrier cross connects, essentially lengths of fiber or copper cable connecting carriers collocated in the same central office would not be considered proprietary elements, and therefore, would be evaluated under the “impair” standard applicable to non-proprietary elements. Applying this analysis involves “taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third party supplier.” Application of this standard compels the conclusion that lack of access to carrier-to-carrier cross connects would, “as a practical, economic, and operational matter, preclude” MFN from providing the services it seeks to offer.

Absent such cross-connects, CLECs wishing access to competitive interoffice transport will have to make arrangements to meet outside of ILEC central offices. This imposes excessive costs on the carriers, and forces them to make sub-optimal network design decisions. Indeed, the ILEC central offices have become essential points of aggregation for CLEC networks – in order to gain access to loops and other critical ILEC network facilities, CLECs are forced to design their networks to collocate at ILEC offices. To deny collocated CLECs the ability to use these points of aggregation to connect to competitive transport providers denies them the full benefits of this network design, depressing the value of their collocations, and forcing the establishment of more costly and less efficient connections outside of the central office.

Accordingly, carrier-to-carrier cross connects are “necessary” for MFN, and the Commission should mandate that the elements be unbundled. *MFN therefore requests that the Commission declare that carrier-to-carrier cross connects should be established as separate unbundled network elements. In the alternative, the Commission should seek further comment on this issue in its upcoming remand proceedings.*

**3. The Commission should declare that MFN’s “Stable Manhole Zero” proposal is mandated as a UNE pursuant to the Act; Alternatively, the Commission could modify its collocation rules to include “stable manhole” in its definition of “premises”**

As a provider of high capacity transport services using both dark and lit fiber, MFN is critically concerned with establishing efficient means of deploying fiber to its carrier and end

---

<sup>9</sup> *Id.* at ¶¶ 101-116.

<sup>10</sup> This comports with the practice in Texas, where dark fiber cross-connects are a UNE under the T2A agreement.

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Six

user customers. One of MFN's greatest concerns is the ability to avoid multiple "pulls" of fiber to various CLEC and other customers collocating within the same ILEC central office. MFN deploys very high-count optical fiber cable – an MFN cable typically carries high fiber count strands such as 432 or 864 fibers. In order to realize the cost and operational efficiencies that such large-scale fiber provides, MFN needs a single, stable point at which it can terminate its fiber, and provide access to its carrier customers. Such a deployment is technically feasible. MFN recently reached agreement to deploy such a configuration throughout the ILEC's territory, a solution reached after three months of Commission-sponsored informal mediation.

MFN has recently reached a tentative agreement with an ILEC that calls for deployment of a network configuration which MFN calls "Stable Manhole Zero." A diagram of this proposal is attached hereto. This configuration would be used in place of collocation, and would obviate any dispute over MFN's ability under the Communications Act to cross-connect to other collocated carriers. Specifically, MFN will establish points of fiber distribution entirely outside the ILEC's central office, at two ILEC manholes that provide access to the office, and will build entrance conduit directly from its manholes to the ILEC central office vault. The designation of two manholes is necessary in order to provide for diverse entry to protect against cable cuts, and is critical to the success of this plan. A typical central office may be surrounded by five to ten manholes (or more in large offices). Currently, the ILEC exercises exclusive discretion over determining which of these manholes will act as a point of entry for the fiber of collocated carriers (this is usually designated as "manhole zero" for that particular carrier). It is not unusual for the ILEC to assign different collocated carriers different manholes as a method of accessing the central office.

In *GTE v. FCC*, the D.C. Circuit stated that "no good reason" existed why a competitor, as opposed to the ILEC, should choose where to establish collocation on the ILEC's premises.<sup>11</sup> If MFN is obligated to tear up the streets and deploy its high-count fiber to manholes that surround the central office one CLEC and interexchange carrier customer at a time (as new MFN carrier customers sign up for service), the delay and expense of such a buildout would destroy the economies of the fiber distribution. In contrast, if an ILEC designates two manholes through which it would pull cable to reach all collocated carriers within the central office, it would ensure efficient fiber distribution.

MFN submits that requiring such a configuration to prevent anticompetitive actions by ILECs provides a "good reason" to allow CLECs to request space outside of the central office for collocation. Using this justification, the Commission could modify its definition of "premises" to expressly provide for MFN's "stable manhole" interconnection configuration, even in instances where there is no space exhaustion in the ILEC central office. Section 251(c)(6) merely requires collocation necessary for interconnection or access to UNEs. Nothing in the

---

<sup>11</sup> *GTE v. FCC*, 2000 WL at \*10.



Magalie Roman Salas, Secretary  
 May 23, 2000  
 Page Seven

statute suggests that collocation must take place in the LEC central office at all.<sup>12</sup> Moreover, the same reasoning set forth above that requires the Commission to declare a carrier-to-carrier cross connect UNE<sup>13</sup> also mandates that the Commission declare diverse stable manholes to be a UNE.

Interconnection and collocation using "stable" manholes would be entirely transparent to the ILEC, and would not require MFN's collocation in the ILEC central office as a means of providing collocated CLECs access to MFN's interoffice transport.<sup>14</sup> The stable manhole zero configuration will accomplish MFN's objectives of efficient fiber distribution, while obviating any dispute over MFN's ability to cross-connect to other carriers. As explained above, the Commission can institutionalize "stable manhole zero" in two ways: by establishing it as a new UNE, or by clarifying that, under Section 251(c)(6) of the Act, manholes surrounding a central office constitute the ILEC's "premises," and must be made available for collocation. MFN therefore *requests that the Commission identify a "stable manhole" UNE, or clarify that the definition of "premises" under the Act and the Commission's collocation rules requires an ILEC to designate of "stable manholes" to which competitive transport providers can build for purposes of building out their networks. The Commission should adopt these proposals or seek comment on them in the Advanced Services Collocation Remand Order in this docket.*

**4. If the Commission does not declare cross-connects or a "stable manhole zero" to be a UNE, it should order provision of stable manholes and cross-connects as services under Section 201**

Section 201(a) of the Act authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers, whether or not the common carriers might choose to do so voluntarily.<sup>15</sup> Similarly, the separate language in Section 201(a) requiring telephone companies to "furnish communications service upon reasonable request" gives the Commission authority to order the LECs to provide interconnection services to carriers, or even to noncarrier interconnectors.<sup>16</sup> In the past, the Commission has used its authority under Section 201 to produce substantial public interest benefits by removing unnecessary barriers to increased competition.<sup>17</sup>

<sup>12</sup> See 27 U.S.C. § 251(c)(6).

<sup>13</sup> See 2 above.

<sup>14</sup> MFN would still obtain traditional collocation to purchase UNEs directly from the ILEC.

<sup>15</sup> *Expanded Interconnection With Local Telephone Company Facilities*, Memorandum Opinion and Order, 59 FR 38922 (1994) at ¶ 18. See, also, e.g., *Lincoln Tel. & Tel. Co. v. FCC*, 659 F2d 1092, 1103-06 (DC Cir 1981); *Bell Telephone Co. of Pa. v. FCC*, 503 F2d 1250, 1268-73 (3rd Cir 1974), cert. denied, 422 US 1026 (1975).

<sup>16</sup> *Expanded Interconnection Order* at ¶ 19.

<sup>17</sup> *Id.* At ¶ 18.

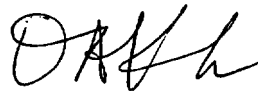
KELLEY DRYE & WARREN LLP

Magalie Roman Salas, Secretary  
May 23, 2000  
Page Eight

Should the Commission determine that it lacks authority under *GTE v. FCC* to mandate carrier-to-carrier cross connects pursuant to Section 251 of the Act, it should require LECs to provide such cross connects or the "stable manhole" interconnection configuration pursuant to its power to require interconnection services under Section 201 of the Act. Because the Commission authority for such action would derive from Section 201, such a service need not be priced at TELRIC as would be required under Section 251. However, the service must be priced on a cost basis, as required by Section 202 of the Act.

Thank you for your attention to this matter.

Sincerely,



Jonathan E. Canis  
David A. Konuch  
Kelley Drye & Warren, L.L.P.  
Counsel for Metromedia Fiber Network  
Services

cc: Larry Strickling  
Frank Lamancusa  
Jared Carlson  
Bill Kehoe  
Julia Patterson  
Bob Riordan (MFN)  
Karen Nations (MFN)

**REGIONAL ILEC CENTRAL  
OFFICE**

